IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.Criminal Misc. Petition No. 557/2004

(Iqbal and Others Vs. State of Rajasthan & Anr.)

Date of order : 11.07.2006

P R E S E N T

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. N.L.Joshi for the petitioners.
Mr. Ashok Upadhyay, Public Prosecutor.
Mr. Sandeep Mehta for the non-petitioner.

BY THE COURT:

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioners have challenged the order dated 25.11.2003 passed by Chief Judicial Magistrate, Churu (for short 'the trial court' hereinafter), whereby the trial court took the cognizance of the offence under Sections 456, 427, 504 and 148 IPC against the petitioners and issued the process. Aggrieved by the order taking cognizance and issuing process, the petitioners have filed the instant criminal misc. petition.

I have heard learned counsel for the parties. Perused the order impugned.

It is contended by learned counsel for the petitioners that cognizance is time barred. He has further contended that after investigation, police filed negative final report and without considering the final report, the trial court took the cognizance.

Counsel appearing for the non-petitioner No.2 and public prosecutor submits that though the police filed negative final report only on the ground that some of the offences are made out which are not cognizable and therefore, it cannot be said that the police did not find the case against the petitioners.

The complainant non-petitioner on notice, filed a protest petition and produced the witnesses, whose statements were recorded by the trial court under Section 200 Cr.P.C. The trial court considering the FR as also the protest petition and statements of witnesses recorded by it, prima-facie came to the conclusion that the offences noticed above are prima-facie made out and accordingly took the cognizance and issued process.

Learned counsel for the petitioner has relied on a decision of this Court in Bhagwan Sahai Khandelwal & Ors. Vs. State of Rajasthan and Anr. 2006 (1) Cr.L.R. (Raj.) 489 wherein this Court held that while taking the cognizance on police final

report, no reasons assigned to disagree with the F.R. and therefore, the matter was remanded. It was not a case where any protest petition was filed and statements of the witnesses were recorded but the trial court took the cognizance on FR itself. Thus, the case relied on by the learned counsel turns on its own facts and is of no help to the petitioner.

In Jagdish Ram Vs. State of Rajasthan, AIR 2004 SC 1734, Hon'ble Apex Court held that at that stage, the Magistrate had only to decide whether sufficient ground exists or not for further proceeding in the matter. It is well settled that notwithstanding the opinion of the police, a Magistrate is empowered to take cognizance if the material on record makes out a case for the said purpose. The investigation is the exclusive domain of the police. Taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the magistrate has to be satisfied whether there is sufficient ground for proceeding, and not whether there is a sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined at the time of conclusion of the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons.

So far as cognizance being barred by period of limitation is concerned, the controversy stands concluded by decision of Hon'ble Supreme Court in Bharat Damodar Kale Vs. State of Andhra Pradesh, (2003) 8 SCC 559, wherein the Hon'ble Apex Court held as under:-

> " A cumulative reading of various provisions of Chapter XXXVI Cr.P.C. clearly indicates that the limitation prescribed therein is only for the filing of the complaint or initiation of the prosecution and not for taking cognizance. It of course prohibits the court from taking cognizance of an offence where the complaint is filed before the court after the expiry of the period mentioned in the said Chapter. This is clear from Section 469 of the Code found in the said Chapter which specifically says that the period of limitation in relation to an offence shall commence either from the date of the offence or from the date when the offence is detected. Section 470 indicates that while computing the period of limitation, time taken during which the case was being diligently prosecuted in another court or in appeal or in revision against the offender should be excluded. The said section also provides in the Explanation that in computing the time required for obtaining the consent or sanction of the Government or any other authority should be excluded. Similarly, the period during which the court was closed will also have to be excluded. All these provisions indicate that the court taking cognizance can take cognizance of an offence the complaint of which is filed before it within the period of limitation prescribed and if need be after excluding such time which is legally excludable. This clearly indicates that the limitation prescribed is not for taking cognizance within the period of limitation, but for taking cognizance of an offence in regard to which a complaint is filed or prosecution is initiated beyond the period of limitation prescribed under the Code.

> Apart from the statutory indication, the said view also gets support from the fact that taking of cognizance is an act of the court over which the prosecuting agency or the complainant has no control. Therefore, a complaint filed within the period of limitation under the Code cannot be made infructuous by an act of the court. The legal phrase "actus curiae neminem gravabit" which means an act of the court shall prejudice no man, or by a delay on the part of the court neither party should suffer, also supports the view that the legislature could not have intended to put a period of limitation on the act of the court of taking cognizance of an offence so as to defeat the case of the complainant."

In this view of the matter, I do not find any error, illegality or perversity in the order impugned warranting interference by invoking extra-ordinary jurisdiction under Section 482 Cr.P.C. It cannot be said that the order impugned would result in serious miscarriage of justice or manifest injustice or abuse of process of the Court.

The misc. petition lacks merit and is accordingly dismissed. Stay petition also stands dismissed.

(H.R.PANWAR), J.

Rp